IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 7745 of 2004

Between:

Cont.Ravi Kanth Singh, S/o.Late Pranmohan Singh,
Bharat Dynamics Ltd., Kanchanbagh, Hyderabad.

..... PETITIONER

AND

1 Union of India, rep.by the Secretary,
Ministry of Home Affairs, New Delhi.
2 Group Commandant CISF,Group Headquarters Office of Central Industrial Security Force, Ministry of Home Affairs
Hyderabad
3 Deputy Inspector General (south Zone) Central Industrial Security Force MInistry of Home Affairs,
Rajaji Bhavan, D-Wing, Besant nagar, Chennai-90.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ declaring (i) the proceedings No. V-15014/GHH/AD.IV/RKS/03/3253 dated 14-7-2003 as modified by the Appellate Authority in proceedings No.V-11014//66/2003/L&R(SZ) 1546 dated 28-2-2004 in imposing the punishment of with holding the increments is illegal and arbitrary; and consequently set aside the same; (ii) declaring the proceedings No.V-11015/GHH/Ad.IV/RKS/03/4445 dated 16-9-2003 of the Group Commandant, CISF Group Hqrs., Hyderabad in so far as treating the intervening period (i.e from the date of removal from service to date of reinstatement from 22-4-87 to 18-8-2002 as "DIES-Non" for all purpose in terms of FR 17(1) as illegal; and consequently set aside the same with a further direction to treat the period as on duty for all purposes; (iii direct the respondents to fix the pay of the petitioner from the initial date of service in the post of constable for all consequential benefits and other order or orders.

Counsel for the Petitioner:MR.G.VIDYASAGAR

Counsel for the Respondent No.: MR.K.MANIK PRABHU

The Court made the following :

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ORDER:

Heard Mr. Vidya Sagar, learned counsel appearing for the petitioner and Mr. K. Narahari, learned Standing counsel appearing on behalf of the respondents.

Petitioner herein, who has been working as Constable in Central Industrial Security Force (CISF) Unit at FACT Unit, Udyogmandal, Cochin, Kerala State, files this Writ Petition, inter alia, seeking for Mandamus assailing the impugned orders dated 14.7.2003, as confirmed in appeal by the orders dated 28.2.2004 as bad, illegal and void.

The main question, after hearing the counsel on either side, which arises for consideration is as to how the period of suspension till date of final orders has to be treated.

The facts in brief are that the petitioner joined the service as CISF Constable on 10.3.1982. However, it is the case of the petitioner that due to the illness of his wife he has to proceed to his native place in September, 1986 and he sought the leave through telegram dated 26.9.1986, latter on followed by the request for extension of leave on 28.10.1986. However, treating the entire said period as un-authorized and without acceding to the leave applications, respondents herein passed the orders on 2/3-1-1987 removing him form service. On appeal, the appellate authority confirmed the decision as per orders dated 29.8.1996. As against the said proceedings, the petitioner approached the High Court of Kerala under Article 226 of the Constitution of India in O.P.No. 9177/96 and the same was allowed remanding the matter back to the appellate authority for fresh consideration. Thereafter, as per orders dated 13.8.2002, the appeal was allowed and further remanding for de-novo enquiry to be held from the stage of supply of the charge memo. Accordingly, fresh charge sheet was issued on 16.11.2002, whereupon, an enquiry was conducted and the Enquiry Officer submitted his report exonerating the petitioner form all charges. In spite of the same, show cause notice was issued on

the ground that the respondents are not accepting the report of the Enquiry Officer and proposing to remove the petitioner form service and to which, the petitioner was filed an explanation. But by an order dated 14.7.2003 respondent passed the final orders imposing punishment of stoppage of one increment for one year with cumulative effect. In the very same order, it is also specified that Over Stayed Leave (OSL) period from 24.9.1986 to 21.4.1987 and the intervening period between the date of removal from service and the date of reporting for duty on reinstatement w.e.f. 22.4.1987 to 18.8.2002 will be regulated separately. Ultimately, thereafter, the respondents have passed the orders dated 11.8.2003 treating the period from 24.9.1986 to 21.4.1987 as on duty and the rest as dies-non. Though the petitioner filed an appeal against such an order, the same was dismissed as per orders dated 28.2.2004. Hence, the Writ Petition.

Sri Vidya Sagar, learned counsel appearing for the petitioner submitted that having regard to the mandate as contemplated under Regulation 33, the petitioner would not have been denied of the subsistence allowance to the extent of half of the salary and the period of suspension until final orders passed. Having treating the portion of the period as on duty and rest of the period as dies-non is only unsustainable and such an action would also amount to imposing further punishment putting the petitioner to double jeopardy, which is prohibited under Article 20(2).

Sri Narahari, learned counsel sought to sustain the impugned orders on the ground that having regard to the continued absence and the reasons given by the petitioner have not accepted, therefore, necessarily the said period has to be treated as dies-non and therefore, in view of the discretion exercised, this court would not go into the same and it does not call for any interference.

Considering the submissions made and also on perusal of the material as stated above, it has to be seen whether the respondents justified in treating the period as dies-non, more so, when by the order dated 14.7.2003, the petitioner has already been imposed punishment for the alleged charge of un-authorized absence stopping one increment for one year with cumulative effect. In fact, any such dies-non, would virtually amount to fresh punishment and it squarely falls within the mischief as contemplated under Article 20(2) of the Constitution of India. Having already given punishment and in spite of the fact that the enquiry report was in his favor, the petitioner submitted his explanation that due to illness of his wife, which is supported

by medical evidence, yet the authority sought to impose the said punishment which itself is more than sufficient. Further, the petitioner did not make any challenge of the orders dated 14.7.2003, therefore, imposition of such punishment is a mute question, which cannot be gone into in this petition. However, having regard to the fact that the petitioner has already given such punishment once and once again imposing of dies-non would certainly affect the petitioner's substantive rights for the no charge made against him. In the circumstances, it has to be held that the impugned order, treating the period as dies-non, is wholly un-sustainable. As held by the Supreme Court in STATE OF PUNJAB VS. BAKSHISH SINGH, instead of sending the matter back to the authority for fresh consideration in regard to treatment to be given, it would suffice in the interest of justice, to treat the entire period with continuity of service, however, withholding the half of the salary, which would not only be inconsonance with the Rule 33 of the aforesaid Rules, where under, the petitioner could not have been denied half of the salary during suspension.

Accordingly, the Writ Petition is allowed. No costs.

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B. PRAKASH RAO, J

DATED: 16.02.2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, The Sixteenth Day of February Two Thousand and Five.

To

1 Union of India, rep.by the Secretary,
Ministry of Home Affairs, New Delhi.
2 Group Commandant CISF,Group Headquarters Office of Central Industrial Security Force, Ministry of Home Affairs
Hyderabad
3 Deputy Inspector General (south Zone) Central Industrial Security Force MInistry of Home Affairs,
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4. 2 CD copies.

5) 1 CC to MR.NARAHARI

6) 1 CC to MR.VIDYASAGAR